

**Fordyce Picture Frame Co., Inc. and Southwest Regional Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, Petitioner.**  
Case 26-RC-6590

30 July 1984

**DECISION AND DIRECTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered objections to and determinative challenges in an election held 30 June 1983 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.<sup>1</sup> The tally of ballots shows 71 for and 79 against the Petitioner, with 14 challenged ballots.

The Board has reviewed the record<sup>2</sup> in light of the exceptions and brief and has adopted the hearing officer's findings<sup>3</sup> and recommendations as modified below.

The Employer contends that the Petitioner's challenges to over-the-road truckdrivers' ballots should be overruled because the parties' stipulation expressly included over-the-road truckdrivers in the unit. The hearing officer found that the parties'

intent regarding over-the-road truckdrivers was unclear and, based on a community of interest analysis, recommended that the challenges to their ballots be sustained. We agree with the Employer's contention that the four employees are "truckdrivers" within the meaning of the parties' stipulation.

In disputes over the inclusion of employees in a stipulated unit, "the Board's function is to ascertain the parties' intent with regard to the disputed employee and then to determine whether such intent is inconsistent with any statutory provision or established Board policy."<sup>4</sup> The Board examines the parties' objective intent as reflected in the stipulation's language.<sup>5</sup> Thus, when the stipulation's language is clear and unambiguous, the Board will hold the parties to their literal agreement.<sup>6</sup> If, however, the objective intent cannot be ascertained, the Board will employ a community of interest analysis to resolve the challenged voter's unit inclusion.<sup>7</sup>

Where the employee's job title fits the stipulation's express descriptive language, we will find a clear expression of intent to include the employee in the unit.<sup>8</sup> The stipulation's explicit language includes within the unit "truckdrivers" employed at the Fordyce, Arkansas facility. At the time of the hearing the Employer employed over-the-road and local drivers who were referred to as "truckdrivers." The one local truckdriver transported the Employer's products from the plant to the warehouse, and the five over-the-road truckdrivers transported the products from the warehouse to the buyers. Thus, the over-the-road drivers and the local driver performed functions associated with the description "truckdriver." We find that the over-the-road drivers' job title and function fit the stipulation's express language. Accordingly, we include over-the-road truckdrivers Barnes, Daniels, Miller, and Whitmer in the unit and overrule the challenges to their ballots.<sup>9</sup>

**DIRECTION**

It is directed that the Regional Director for Region 26 shall, pursuant to the Board's Rules and Regulations, within 10 days of this decision, open and count Board Exhibit 2 and the ballots cast by Mike Barnes, Johnny Daniels, Sam Miller, Jerry Whitmer, Dorothy Rogers, Clarence Bell, Alvie Shannon, Jim Garlington, Hugh Carroll, Bobby Li-

<sup>1</sup> Absent exceptions, we adopt pro forma the hearing officer's recommendations to count Board Exh. 2 and the ballots cast by employees Rogers, Bell, Shannon, Garlington, Carroll, Lisemby, Boswell, Stewart, and Wilson, and to overrule Objections 7-9, 11, 12, 14, 15, and 17-24.

<sup>2</sup> The Employer excepts to the hearing officer's denial of its motion for mistrial or request to recall certain witnesses based on a breach of a sequestration arrangement. At least one witness after testifying told witnesses who had not yet testified that the Employer sought to produce written statements in their possession. The Employer claims that as a result witnesses avoided producing their written statements and avoided giving testimony inconsistent with those producing their written statements.

A representation case, unlike an unfair labor practice case, is not an adversary proceeding, and therefore the Board's sequestration rules are not directly applicable. Further, the Petitioner's attorney furnished all witnesses' statements for the Employer's examination. Of the employees who admitted receiving written statements, Bessie Biggs was the only one whom the Employer did not have an opportunity to question about her statement. The hearing officer was aware of this limited breach of the sequestration arrangement when he assessed the witnesses' credibility. See *Gossen Co.*, 254 NLRB 339 fn. 1 (1981). We find that the Employer was not prejudiced by the hearing officer's rulings.

<sup>3</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

In adopting the hearing officer's findings that the Employer engaged in objectionable conduct, we do not find it necessary to rely on *PPG Industries*, 251 NLRB 1146 (1980), and *Fruehauf Corp.*, 237 NLRB 399 (1978), which the Board recently overruled in *Rossmore House*, 269 NLRB 1176 (1984). Nor, because the Employer's objectionable conduct was widespread, do we find it necessary to rely on the presumption that employees disseminate word of objectionable conduct to other unit employees.

In discussing Objection 16, the hearing officer's report states at par. 7 that Barnes did not recall any conversation with "Jackson." It is clear from the report that the hearing officer inadvertently substituted "Jackson" for "Young."

<sup>4</sup> *Tribune Co.*, 190 NLRB 398, 398-399 (1971).

<sup>5</sup> *White Cloud Products*, 214 NLRB 516, 517 (1974).

<sup>6</sup> *Prudential Insurance Co.*, 246 NLRB 547, 547-548 (1979).

<sup>7</sup> See, e.g., *Detective Intelligence Service*, 177 NLRB 69 (1969), enf'd. 488 F.2d 1022 (9th Cir. 1971).

<sup>8</sup> *Viacom Cablevision*, 268 NLRB 633 (1984).

<sup>9</sup> Given our resolution of this issue, we find it unnecessary to discuss whether the hearing officer relied on admissible evidence to conclude that the parties did not reach a meeting of the minds.

semby, Elnora Boswell, Bill Stewart, and Marvin Wilson and thereafter prepare and serve on the parties a revised tally of ballots. If the revised tally shows that the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative.

In the event that the revised tally shows that the Petitioner has not received a majority of the valid ballots cast, a second election by secret ballot shall be held among the employees in the unit found appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their employee status during the eligibility period and their replacements. Those in the military service may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and

who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by the Petitioner.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.